

MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

BRUCE F. BIRD,

Appellant,

v.

MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL
LAND SURVEYORS AND LANDSCAPE ARCHITECTS,

Respondent.

DOCKET NUMBER WD71451

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 11, 2010

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge

APPELLATE JUDGES

Division Two: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard
and Alok Ahuja, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BRUCE F. BIRD,

Appellant,

v.

**MISSOURI BOARD FOR ARCHITECTS,
PROFESSIONAL ENGINEERS,
PROFESSIONAL LAND SURVEYORS
AND LANDSCAPE ARCHITECTS,**

Respondent.

**OPINION FILED:
May 11, 2010**

WD71451

Cole County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Victor C. Howard and Alok Ahuja, Judges

Bruce F. Bird appeals from the judgment of the Cole County Circuit Court dismissing Bird's application for attorney's fees and expenses as untimely. Bird argues that he filed the fee application within thirty days of finally prevailing against the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in a licensing dispute. We agree.

REVERSED AND REMANDED.

Division Two holds:

After an unfavorable decision from the Administrative Hearing Commission (AHC), Bird petitioned for review at the circuit court level. The trial court reversed the decision of the AHC and remanded the case back for rehearing. The Board appealed the judgment, and the case ultimately came before the Missouri Supreme Court. The Supreme Court upheld the decision of the trial court; however, it found that the trial court had erred in remanding the case and affirmed the decision only as so modified. Bird submitted a motion for attorney's fees consistent with section 536.087.

In its subsequent mandate to the trial court, the Supreme Court ordered the trial court to award attorney's fees consistent with section 536.087. The trial court dismissed the motion on the basis that the section requires a prevailing party to request attorney's fees within thirty days in the forum where the party first prevailed. Since the trial court intended its initial judgment to be a final judgment (though the trial court did not expressly say so) in favor of Bird, it found that Bird was required to have filed a motion requesting fees within thirty days of that judgment, and consequently, the trial court did not possess authority to award fees.

However, the outright reversal, which triggered Bird's duty to file a fee application under section 536.087, did not exist prior to the Supreme Court's issuance of its Opinion and mandate, *modifying* the circuit court's initial judgment to achieve that result. While litigants are required to read and follow a court's *judgment*, they cannot be expected to read the court's *mind*. What the circuit court may have *intended* (without expressly stating as such) cannot support Bird's loss of his statutory right to attorney's fees in the circumstances of this case unless, upon remand to the circuit court, the circuit court expressly concludes that (1) the position of the State was substantially justified or (2) that special circumstances make an award unjust.

Opinion by: Mark D. Pfeiffer, Judge

May 11, 2010

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